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Civil Liberties and the Korean War

By

K D Ewing, Joan Mahoney and Andrew Moretta

‘Democracies can overdo their respect for liberty of speech in these circumstances’.¹

I INTRODUCTION

Whatever the textbooks, lawyers and judges may say about free speech, few governments will tolerate for long uncomfortable truths being told to expose lies and deception. Restrictions on speech come in multiple forms, whether prior restraints to prevent things being said, or penalties after the event to punish for things having been said. These restrictions may relate to speech of different kinds, our tolerance of restraint depending to a large extent on the subject-matter: in liberal societies political speech is generally thought to be worthy of the highest protection. But apart from traditional questions of *form* and *substance* are the less traditional questions of *method*. By what means does the State seek to restrain or punish those who speak out of line?

The use of legislative and judicial powers respectively is of course the method of restraint most familiar to lawyers, but they are not the exclusive means by which the State seeks to silence its critics. Although there are significant statutory and common law restraints on freedom of expression, in the case of political speech it may nevertheless not be possible easily to secure the necessary legislative or judicial approval for the imposition of additional limits. Also important but insufficiently analysed is thus the administrative power of the State, by which those clothed with legal authority use that authority to restrict speech for partisan ends. One of the most important examples of the abuse of such power is provided by the Korean War, which is quickly losing its sobriquet as the ‘forgotten war’.²

The Korean hostilities started on 25 June 1950 when the Peoples’ Army (equipped by the Soviet Union and supported by China) crossed the 38th parallel. The United Kingdom sent 90,000 troops as part of an American led United Nations peace-keeping force, despatched under the authority of UN Security Resolution 84, ostensibly to restore peace and stability to Korea.³ This was a brutal conflict in which over five million civilians and soldiers from several countries perished, including an estimated 20% of the North Korean population, before an armistice was signed on 27 July 1953. Britain’s involvement – authorised by Attlee and continued by Churchill – led to some 1,000 British military personnel being killed, with many more wounded or imprisoned in what were extremely harsh conditions.

¹ TNA, PREM 8/1525 (Emergency Powers, Minute by Attorney General, 25 July 1950).

² *BBC News*, 20 April 2001 (‘Britain’s Forgotten War’).

³ The leading and definitive work is B Cumings *The Korean War: A History* (2010). For a different account, see M Hastings, *The Korean War* (2012).

It has been argued forcefully that in order to understand the situation in Korea today, it is necessary to understand what happened in the 1950s.⁴ The atrocities committed by the US-led UN forces are beyond dispute, and can hardly be a matter of surprise given the calculated barbarism only five years earlier, as anyone who has visited the Hiroshima Peace Park and Museum will be only too well aware.⁵ Almost as shameful as the atrocities in Korea were the extreme steps taken to silence and eventually to punish those who sought to expose them. In this article we tell the story of three of the most prominent critics: a journalist (Alan Winnington), a women's movement activist (Monica Felton), and a solicitor (Jack Gaster). Both Winnington and Gaster were Communists, but Felton was a member of the Labour Party.⁶

A superficial examination of the record might suggest that the Attlee government and Churchill's thereafter responded to provocation with commendable restraint: no one was prosecuted for things said or written about the Korean War, despite strong political pressure to do so. In this paper, however, we consider how in the absence of carefully tailored and proportionate legislation, the continuing relevance of the Korean War lies not only in the contemporary resumption of provocative behaviour: on the contrary, the conduct of government during the war also teaches that prosecution is but one of the ways by which law can be deployed. In this case it was the law of treason that was the weapon of intimidation and punishment, with threats of increasing gravity being made under both Labour and Conservative governments.

II ALAN WINNINGTON

Alan Winnington was a member of the British Communist party, based in China. He had travelled there in 1948 at the request of Harry Pollitt – the General Secretary of the Communist Party of Great Britain - to provide support to the Communist Party of China. Being based in China during the Korean War, Winnington was able to provide an invaluable and unrivalled account of the war as seen from North Korea. Soon after the outbreak of hostilities, Winnington went to Korea, providing for the *Daily Worker* a different account from that 'churned out by radio and press (*Daily Herald* and *Daily Mail* alike)', the truth being 'so carefully hidden and distorted by the millionaire press'. A long despatch from Winnington was published separately as a pamphlet in September 1950,⁷ this providing detail that was no doubt unwelcome in London and Washington, though scarcely detail of a kind that would not be provided by a conscientious war reporter doing his job properly.

Reminding his readers of the bombing of Coventry, Winnington reported much worse – not only of large-scale destruction but of the gratuitous and deliberate slaughter of the innocent:

⁴ B Cumings, 'Americans once carpet-bombed North Korea. It's time to remember that past', *The Guardian*, 13 August 2017.

⁵ 'Calculated' in the sense that Hiroshima (like Nagasaki) was chosen as an atomic bomb site because of the density of its population, thereby to increase casualties.

⁶ Unlike the United States and a number of other countries, the United Kingdom did not ban the Communist Party, which indeed had two MPs elected in 1945. In the 1940s, defence of the realm regulations were used by the war-time Coalition briefly to suppress the *Daily Worker*, the Communist Party's newspaper. See W Rust, *The Story of the Daily Worker* (2010 ed).

⁷ A Winnington. *I Saw the Truth in Korea* (1950).

It takes pure Nazi mentality to kill a woman and child in cold blood, using for the purpose a few thousand horse-power and a fire-power of over 100 machine gun bullets per second. I have seen this happen. She was the only person on that stretch of road because everyone else had dropped into ditches when the plane was heard. It was not a mistake by the pilot, because in Korea, with good eyes, you can distinguish a woman from a mile away or more. Typically, this one was carrying a baby strapped to her back and a big bundle on her head, and was wearing a long billowing white skirt. The pilot knew he was blasting a woman and child but he just casually opened up his guns and went on'.⁸

Although the conduct reported is utterly inexcusable, this is reporting of a kind with which we have become very familiar since 1950. But Winnington was also to report about the slaughter of thousands of political prisoners and the mass graves in which they were buried:

In the middle you can walk safely, though your shoes may roll on American cartridge shells, but at the side you must be careful for the rest of the valley is a thin crust of earth covering corpses of more than 7,000 men and women. One of the party with me stepped through nearly to his hip in rotting human tissue. Every few feet there is a fissure in the topsoil through which you can see into a gradually sinking mass of flesh and bone. The smell is something tangible that seeps into your throat. For days after I could taste the smell. All along the great death pits, waxy dead hands and feet, knees, elbows, twisted faces and heads burst open by bullets, sticking through the soil.⁹

And so it goes on.¹⁰ It is unlikely that one side only was responsible for the brutality and barbarity, in a war that 'bore all the hallmarks of the Nazi blitzkrieg, with both sides staging massive, fast-moving offensives which swept aside the opposition'.¹¹ It is also unlikely possible that Winnington's account was not exaggerated, as a risk the Cabinet Secretary appeared privately to acknowledge raise when urging caution about legislating to punish reports of this kind.¹² This nevertheless did not protect Winnington from allegations of treason by those embarrassed by his reports. To this end, on 18 September 1950 the Attorney General introduced a discussion in Cabinet about the application of the law of treason to the events in Korea, in advance of a parliamentary question to which he was to respond later that day.¹³ Sir Hartley Shawcross KC informed those present that the law of treason and other English laws applied as if the country were at war, a view with which the Lord Chancellor (Jowitt) not only agreed but said should be 'publicly stated'.¹⁴

⁸ Ibid, p 4.

⁹ Ibid, p 5.

¹⁰ According to Winnington, 'the death pits are six feet deep and from six to twelve feet wide. The biggest is 200 yards long. Two are 100 yards long and the smallest 30 yards long. Local peasants were forced at the rifle point to dig them' (ibid).

¹¹ *BBC News*, 20 April 2001 ('Britain's Forgotten War').

¹² TNA, PREM 8/1525 (Overseas Operations (Security of Forces) Bill, Memorandum to Prime Minister, 15 November 1950).

¹³ TNA, CAB 128/18/20 (18 September 1950).

¹⁴ The Lord Chancellor in particular was in no doubt that North Korea was at war with South Korea, and that 'the States which joined this conflict were also at war'. So far as international law was

As a result, the Attorney General was invited to use the opportunity of a parliamentary written answer to say that 'a British subject who consorted with the North Koreans might lay himself open to a charge of treason'. So in response to Major Tufton Beamish (Tory MP for Lewes), Shawcross issued an uncompromising threat to Winnington and the *Daily Worker*:

This question involves difficult problems both of international and municipal law to which the Government have been giving urgent consideration. Meanwhile, no one should be in doubt that the law of treason is applicable in connection with the present conflict. The activities of the only individual at present known to be with the North Korean Forces, as well as those of the newspaper he represents, are being closely watched.¹⁵

The question of treason returned to Cabinet on 6 November, again following PQs to the Attorney General. On this occasion, however, the Attorney returned to ask his colleagues whether they knew of 'any matters, either of an international or domestic character, to which he ought to have regard in deciding whether or not to prosecute those responsible for the propaganda conducted by the *Daily Worker* in support of the Communist cause in Korea'.¹⁶ Particular attention was drawn to Winnington's pamphlet, 'which made grave allegations against the South Koreans and American soldiers and airmen and attacked the United Kingdom Government for their support of United Nations action in Korea'.

Surprisingly, Shawcross 'had little doubt that this publication gave 'aid and comfort to The King's enemies' and so constituted treason, but he was reluctant to bring against the author or publishers a charge of treason, for which the only penalty was death'.¹⁷ Unsurprisingly, that reluctance appears to have been widely shared:

In discussion it was pointed out that other newspapers and periodicals had published information about alleged atrocities by South Koreans, and there was little doubt that the Koreans on both sides had conducted the war in a barbarous fashion. It would, therefore, be said that the author and publishers of this pamphlet were being prosecuted because of its political bias. There was also a risk that a jury, knowing that the penalty was death, would refuse to convict.¹⁸

The Attorney General was invited to 'take note of the views expressed in the Cabinet's discussion on the political and other objections to the institution of proceedings for treason in respect of *Daily Worker* propaganda regarding the Korean

concerned, there was some doubt on the ground that some international lawyers were said to believe that the Korean operation 'represented something in the nature of police action', which was how it had been represented by both US President Truman and the Prime Minister of Canada: *ibid.* However, the more sober DPP appeared to disagree. See below, p ***.

¹⁵ HC Debs, 19 September 1950, col 203 WA.

¹⁶ TNA, CAB 128/18/31 (6 November 1950).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

campaign'.¹⁹

The Cabinet thus appeared to support Shawcross' position of using treason as an instrument of intimidation in the full knowledge that there was no immediate intention to prosecute (though that might change). In doing so, it is striking that there was no reference in the Cabinet minute to the need to respect free speech, ministers influenced it seems only by the same practical considerations that had moved Shawcross. One reason why there might not be a prosecution is because - as the DPP was later to reveal - all the ingredients necessary for a treason charge were not present, Shawcross risking accusations of mendacity as well as naked political calculation in his parliamentary threat to Winnington and the *Daily Worker*.²⁰ But as the quotation with which this article begins clearly reveals, the Attorney General was no defender of free speech, these quoted remarks expressed in support of proposals for limits and restrictions by the introduction of war time restraints into peace-time conditions.²¹

III MONICA FELTON

In 1951 attention turned to Mrs Monica Felton, the Chairman of the Stevenage Development Corporation, who took leave of absence from her employment, and in a private capacity left England for Korea on 29 April. On the day she left, Mrs Felton wrote to John Freeman, Labour MP for Watford, the latter admitting to having 'some very slight acquaintance with this lady for a number of years'.²² Freeman explained that Mrs Felton had told him that

A fact finding delegation of one each from many countries, including Sweden, Denmark, Norway, France, Canada, the USA, and the USSR, is about to go to Korea to investigate conditions. I have been asked to go from this country, and have agreed to do so'.²³

In the same letter, Mrs Felton explained

Although the delegation is sponsored by the Women's Democratic Federation it will include many women who, like myself, have no connection with that organisation but who believe that an objective report on the facts would be of real value to the people of the countries from which they come.²⁴

¹⁹ Ibid. Even if a conviction was obtained, this would be regarded as a Government prosecution and it might be thought anomalous that the Home Secretary should thereafter advise The King to commute the only sentence which the court could impose

²⁰ Shawcross nevertheless expressed the view three times that the Treason Act applied to the Korean conflict, according to Sir Reginald Manningham-Buller when he was Attorney General: H C Debs, 7 March 1955, col 33.

²¹ This was a not uncommon practice, with first world war defence of the realm powers made permanent in the Official Secrets Act 1920.

²² HC Debs, 14 June 1951, col 2680.

²³ Ibid.

²⁴ Ibid. Felton had asked Freeman if he would see her personally so that she could tell him about her experiences. It seems that he had written to her to say that he would be pleased to see her on her return, without realizing the nature of her visit (thinking that she was going to South Korea rather than

Mrs Felton wrote in similar terms to a number of others, including George Lindgren, a junior minister for town and country planning.²⁵ An account of the trip is to be found in *That's Why I Went*, in which Felton reveals that she was greatly moved by what she saw in Sinyju and Pyong-Yang in particular.²⁶ A flavour of her experience is to be found in a recording made for *Moscow Radio* on the way home, the recording then broadcast on 10 June 1951. Felton does not give an account of the contents of the broadcast in *That's Why I Went*, though she claims that she wrote the script while 'weighing every word'.²⁷ Extracts were read out in the House of Commons a few days later by hostile Tory MPs, indicating that Felton spoke of the 'atrocities committed in the areas which had been occupied by the United States, British and Syngman Rhee forces'. 'Again and again', she continued

we were told of whole families, men, women and children, who had been imprisoned for days without food or water and who had then been shot, burnt to death and even, on very many occasions, buried alive. The stories were told us again and again by eye-witnesses, by people who had themselves suffered many of the tortures they described or who had lost their own relatives.²⁸

The Moscow recording was broadcast three days after Mrs Felton's return on 7 June, from which point events moved very quickly. On 8 June, she held a press conference in Fleet Street. Although attended by only a 'handful of press representatives',²⁹ on the following day (9 June) her 'lurid' account was fully covered by newspapers,³⁰ from the *Daily Mail* to the *Daily Worker*. The next day was a Sunday (the day of the Moscow broadcast), but on Monday 11 June, she received two letters from Hugh Dalton, the Minister for Town and Country Planning. One instructed her not to attend the next board meeting of the Stevenage Development Corporation, and the other asked for an explanation for her absence. Felton replied to the latter instantly, and on the following day, 12 June, she was sacked, the minister making clear that the reason for her dismissal was her failure to attend the Public Accounts Committee on 7 June.³¹ Her dismissal was announced by Dalton to the House of Commons on 13 June, and widely discussed in the press immediately thereafter.

North Korea). He was now embarrassed at having written in 'cordial terms' and that of course he would be pleased to see her on her return (ibid, col 2681).

²⁵ LSE, Hugh Dalton Papers, 2/9/24 (Letter from Monica Felton to Charles Lindgren MP, 29 April 1951).

²⁶ M Felton, *That's Why I Went* (1953), said to be a 'gushing little book about her uplifting experience': M Hastings, *The Korean War*, above, p ***. An earlier account was provided in a pamphlet, M Felton, *What I Saw in Korea* [nd].

²⁷ Felton, ibid, p 166. The text is available at Tass Agency, *Soviet Monitor No 12,599*, 11 June 1951: Labour Party/GS/PROS/1-85. Labour Party Files are stored at the Peoples' History Museum, Manchester.

²⁸ HC Debs, 14 June 1950, col 2677. This is not quite an accurate quotation from the Tass report, above.

²⁹ *Daily Mail*, 9 June 1950.

³⁰ *Manchester Guardian*, 14 June 1951. Internal Labour Party correspondence referred to 'lurid atrocity stories, which seem to difficult to believe in this exaggerated form'. Labour Party files reveal that Labour Party officials were more exercised by the fact that the visit had been sponsored by the Women's International Democratic Federation than by what was reported: Labour Party/GS/PROS/53-54. WIDF was a Labour Party proscribed organisation.

³¹ The dismissal was well covered in the press on the following day: *Manchester Guardian*, *Daily Herald*, 13 June 1951.

In announcing his decision to the House on 13 June 1951, Dalton was extremely circumspect, very careful to avoid any suggestion that Felton's sacking was politically motivated.³² The reason for her dismissal was as previously set out in his letter of 12 June, namely Mrs Felton's failure to attend a meeting of the Public Accounts Committee on 7 June to answer questions about the Corporation, a meeting for which Felton concedes she was four hours late because of travel delays.³³ The failure of a witness to attend the proceedings of the Committee except for reasons of ill-health was said by Dalton to be 'unprecedented', and a 'discourtesy to [the] House'. According to Dalton, 'it was Mrs. Felton's duty to subordinate all other arrangements, whether public or private, whether at home or abroad, to this summons from the Public Accounts Committee', and it was for 'neglect of duty' that she was dismissed, being 'unfit to continue to hold the post' from which she had been relieved.³⁴

Although Felton claimed that she was not dismissed immediately but only four days after her return and only after she had said 'the things I had come back to London to say',³⁵ Dalton repudiated any suggestion that Felton's remarks had played any part in her dismissal:

my departmental duty is to secure the efficient administration of new towns. From that point of view it is a matter of total indifference to me whether Mrs. Felton was absent in Hollywood or the Riviera or anywhere else.

With Dalton also emphasising that 'she was absent, and neglected her functions',³⁶ it was left to (Shadow Foreign Secretary) Anthony Eden of all people to tell the minister that it would be 'hard for many of us to believe that the reasons were limited to the answer which he has given'. In this he was joined by Gilbert McAllister, the Labour MP for Rutherglen, who challenged Dalton about 'one of the gravest attacks on civil liberties that we have seen'.³⁷

This decisive and peremptory action was no doubt intended to protect Dalton from parliamentary criticism that he was harbouring a traitor, despite his denials about his motives.³⁸ If so, it backfired spectacularly. A Tory backbencher raised a lovely point of order, to the effect that the proceedings of Select Committees are privileged until reported to the House. To the apparent rage of Dalton,³⁹ the Speaker agreed that 'proceedings that are not reported to the House are not to be mentioned'.⁴⁰ Turning the tables on the hapless Minister, Earl Winterton claimed that 'that there is no previous instance of a Minister announcing to the House an action which has taken place in Select Committee'.⁴¹ The Speaker was thus formally requested to consider

³² HC Debs, 13 June 1951, col 2308.

³³ M Felton, *That's Why I Went* (1953), p 162.

³⁴ HC Debs, 13 June 1951, col 2309.

³⁵ Felton, *That's Why I Went*, above, p 162.

³⁶ HC Debs, 13 June 1951, col 2309.

³⁷ *Ibid*, col 2311.

³⁸ Even the *Daily Mail* seemed the 'utmost speed' of the proceedings to be significant: *Daily Mail*, 14 June 1951.

³⁹ On which see especially *Daily Telegraph*, 14 June 1951. Dalton's announcement was widely covered in the press.

⁴⁰ HC Debs, 13 June 1951, col 2311.

⁴¹ *Ibid*, col 2312.

whether ‘the proceedings of a Select Committee could not be disclosed in this House without the permission of the Chairman of the Select Committee; in other words, without a statement to the House by the Chairman of the Select Committee’.⁴²

IV ALLEGATIONS OF TREASON

Dismissal was the least of Felton’s worries, with some Tory MPs also demanding that she be executed.⁴³ As in case of Alan Winnington, Felton’s visit led to allegations of treason being made against her, and to demands for her prosecution. These demands - especially chilling, given that a conviction carried the death penalty - were to be heard in the Commons, first in an Adjournment Debate, the tormentor in chief being Charles Taylor, the Tory MP for Eastbourne. Subsequently knighted, the Cambridge educated Taylor left little of note, his chief distinction being that he was elected for the first time in 1935 at a young age, and that he was married to an actress, Constance Shotter.⁴⁴ Nevertheless, at 11.29 pm on 14 June 1951 Taylor rose to make some very grave allegations, having originally proposed to devote the occasion to matters relating to gas and electricity boards.⁴⁵

After recounting some of the detail referred to above, and reading a long extract from Felton’s Moscow radio address, Taylor also referred to a Press Association report of a recent meeting at Holborn:

‘Women wept as they listened to Dr. Monica Felton at Holborn Hall last night’. She said: ‘We as British people are ashamed that Britain should have played any part at all in the Korea situation’. She said that men and women in Northern Korea had been machine gunned as they worked in the fields. She said: ‘In areas occupied by Americans, persons had been killed and burnt and buried alive’. She said that hospitals had been bombed despite Red Cross markings, and that tortures had been inflicted upon innocent people.⁴⁶

Taylor conceded that he was not ‘trying this woman in the House of Commons this evening’. But he nevertheless submitted that there was a ‘very strong case here to say that she has been guilty of high treason’, with a number of Members showing their appreciation in the normal way.⁴⁷

Although there was no evidence that Taylor was a lawyer, the nub of the case against Felton was the Treason Act 1351, by which it was an offence to give aid or comfort to the King’s enemies, in the realm or elsewhere. According to Taylor, Mrs Felton’s ‘widely-publicised broadcast from Moscow, incidentally heard in this country by an hon Member, has given aid and comfort to the King’s enemies’. Anticipating the argument that the United Kingdom was not officially at war with North Korea, Taylor found support in Archbold’s *Criminal Pleading and Practice* for the view that ‘the word ‘enemies’ includes the subjects of States in actual hostility with us whether war

⁴² Ibid.

⁴³ *Daily Herald*, 15 June 1951.

⁴⁴ *Daily Telegraph*, 2 January 2013 (Obituary of Barbara Shotter, actress).

⁴⁵ HC Debs, 14 June 1950, col 2676.

⁴⁶ Ibid, col 2678.

⁴⁷ Ibid.

has been solemnly proclaimed or not'. As Taylor made clear, this was not publicity seeking on his part. Addressing the Attorney General directly, he asked

if, on the evidence which has been submitted to him, he is prepared to institute proceedings against this woman for treason so that the case may be fully examined in the British courts of justice. If in those courts she is found to be innocent she will be set free, but if, on the other hand, she is found to be guilty she must pay the penalty.⁴⁸

There were no murmurs of approval at this stage in the proceedings. Nor when Taylor insisted that 'we have got to show these people that, if they are failing in their allegiance to their King and country, and if they are prepared to give encouragement and comfort to, and to consort with, the King's enemies, then the most drastic action will be taken against them'.⁴⁹ At this point, however, the Attorney General (now Sir Frank Soskice) intervened dramatically to turn up the heat, rising to say that the papers on the case had been referred to the DPP.⁵⁰ This had the immediate effect of killing any further discussion about the law and any possible illegality on Felton's part. But it would hardly give her any cause for comfort, particularly as she claims to have considered but discounted the threat of treason while in Moscow.⁵¹ Nor would she have taken any comfort from the following day's front page splash in the *Daily Herald* announcing 'Mrs Felton: Papers for Police', and 'Treason Allegation Causes Commons Sensation'.⁵²

The matter was raised a few days later by Nigel Fisher, the Eton and Cambridge educated Tory MP for Hitchin, said to have been on the liberal side of the Tory party.⁵³ But Soskice was again able to parry the question on the ground that he was still waiting for the DPP to report.⁵⁴ That, however, was an invitation for another line of questioning about why Felton was allowed to travel to Korea on a British passport, an important question as it turns out in view of the extreme proposals then circulating in government about whether the power should be taken to prohibit people from leaving the country or to restrict the destinations to which they may travel. Directing these questions to Kenneth Younger (Minister of State at the Foreign Office), Fisher asked whether 'a passport endorsement should be required for a British subject to travel to visit an enemy State with whom we are actually engaged in war?'. According to Younger, however, there was no need to do that, because her passport 'was not made valid for that'.⁵⁵

This rather curious response was never likely to put an end to proposals for travel bans being developed further, demands fuelled by various high level defections to the Soviet Union. In the meantime, Felton was left to sweat on the treason point for another 10 days, with three questions now on the Order paper waiting for a reply.

⁴⁸ Ibid, col 2679.

⁴⁹ Ibid.

⁵⁰ Ibid, col 2680.

⁵¹ M Felton, *That's Why I Went*, above, p 165.

⁵² *Daily Herald*, 15 June 1951.

⁵³ *Independent*, 10 October 1996 (Obituary).

⁵⁴ HC Debs, 18 June 1950, col 1.

⁵⁵ Ibid, col 3.

After consulting both the Prime Minister and Cabinet about how best to respond,⁵⁶ the Attorney General informed the House on 25 June 1951 that -

The advice which I have received from the Director of Public Prosecutions and from Treasury Counsel, whose opinion was taken on my instructions, is that there is at present insufficient evidence to found any criminal charge against Mrs. Felton. I agree with this advice, and accordingly do not intend to direct the institution of criminal proceedings against her.⁵⁷

That was hardly a surprise: as the (same) DPP was to confirm four years later on the same facts, there was no prospect of a treason conviction.⁵⁸ The reference to the DPP bears all the hallmarks of a political stunt by Soskice, perhaps to deflect responsibility for inaction to the DPP in the face of strong Tory pressure for a prosecution. But like the Winnington case a few months earlier, the decision was not based on a robust defence of Mrs Felton's freedom of speech, but on the lack of evidence such as to justify proceedings against her. And although there was to be no prosecution on this occasion, this was nevertheless a fresh reminder of the continuing dangers faced by those who travelled to and reported on events in North Korea.

V JACK GASTER

Just as Winnington had provoked proposals to restore wartime restrictions on free speech, so Felton had provoked proposals to introduce travel bans. But like the former, the latter came to nought and Felton was thus free to make another visit to Korea, though little is known about it beyond the fact that she met with British prisoners of war.⁵⁹ There was no repeat of the publicity surrounding her first visit. Felton's second visit was, however, greatly overshadowed by that made by Jack Gaster, the London solicitor. Initially a member of the Independent Labour Party, Gaster joined the Communist Party along with many others in 1935.⁶⁰ According to his Security Service file, Gaster became a London District Officer of the Party, and was prominent as an anti-fascist speaker and author.⁶¹ He served in the army between 1942 and 1945, and was discharged to work on the Communist party's election campaign in 1945.

Following the general election in 1945, Gaster was employed in the Parliamentary Department at King Street (Communist Party HQ), and worked closely with William Gallacher and Phil Piratin, his intercepted phone calls with the latter revealing a sometimes difficult relationship between the two Communist Party MPs. In 1946, Gaster was elected to the London County Council, served on the National Appeals Committee of the Communist Party, and acted as Secretary of the Communist Party Lawyers' Group. Inevitably, Gaster was as a result the subject of routine MI5

⁵⁶ See TNA, CAB 129/46 (Mrs Felton: Memorandum by the Attorney General); TNA, CAB 128/19/45 (Cabinet Conclusions, 21 June 1951).

⁵⁷ HC Debs 25 June 1951, col 109-10 WA.

⁵⁸ TNA, DPP 2/2425 (FELTON, Monica: Communist Activities in Korea. No action).

⁵⁹ A Conference of Privy Councillors had recommended against any such legislation on the ground that the powers in the Official Secrets Acts 1911-1940 were sufficient, and would otherwise be pointless: Statement on the Findings of Privy Councillors on Security, Cmd 9715, 1956, paras 71 – 73.

⁶⁰ For a fuller account, see *Guardian*, 13 March 2007 (Victoria Brittain).

⁶¹ TNA, KV 2/1558 et seq.

surveillance in the sense that references to him in the surveillance of others would be added to his file. Thus, telephone conversations to him at King Street - and from him to King Street - are picked up by the telephone check on the Communist Party; meetings in which he participated at King Street are picked up by the listening device and transcribed; and public meetings he attended and demonstrations he organised are written up in Special Branch Reports.

Political advice given to Phil Piratin MP is recorded, legal advice given to various people who consulted him about various matters is retained, as is information about his private life, such as details of the lease of a flat to an employee of *Soviet Weekly* who was also the subject of surveillance, and who indeed appears to have been 'interviewed' by the Security Service. To all of this is added any relevant information already in the public domain, such as Gaster's nomination of parliamentary candidates, his defeat in LCC elections (1952), and newspaper reports about him or referring to him. Surveillance became more intense, however, when in 1952 Gaster took part in an investigation into the use by the Americans of germ warfare during the Korean war, as a members of a commission established by the International Association of Democratic Lawyers (IADL) (denounced by the British government as 'another international Communist 'front' organisation'),

As part of the intensification of surveillance, a Foreign Office minute of 24 March 1952 (addressed we presume to the Security Service) requested a 'little background information' about Gaster (who was joined in this mission by representatives from a number of other countries), to be given to the Charge d'Affaires at Peking 'for his own guidance'.⁶² The author of the minute then asked whether there was anything that the Charge d'Affaires at Peking could say publicly there to discredit Gaster. A short note was duly provided as requested, making clear that it was general knowledge that Gaster was an 'active communist', on many occasions making public speeches on behalf of the party.⁶³ A little extra colour from the files was nevertheless provided, though there is no mention of anything new that could be said to discredit Gaster, the note struggling to find anything notable that was not already in the public domain. Gaster was a man who lived his life in public, with nothing to be found by MI5.

As might be expected, Gaster was nevertheless very closely monitored while a member of the Commission. A Security Service report records that he left the United Kingdom on 9 February 1952, arriving in Korea on 1 March.⁶⁴ Following his arrival in Korea, Gaster sent a telegram to D N Pritt KC (the President of IADL), the contents of the telegram being reported in the *Daily Worker* on 19 March.⁶⁵ This was said to confirm that the Americans had been engaged in germ warfare. Two days later *Moscow Radio* broadcast excerpts from an address by Gaster to representatives of the Korean Republic. Thereafter, Gaster was reported by *Soviet Weekly* to have told a reception in Peking on 22 March that

⁶² TNA, KV 2/1559 (Copy of FO Minute from L M Minford to B1).

⁶³ TNA, KV 2/1559 (K Morton Evan to Minford, 27 March 1952).

⁶⁴ TNA, DPP 2/2424 (Security Service Report on Mr Jack Gaster).

⁶⁵ Pritt was himself the subject of intense surveillance for a long period: TNA, KV 2/1062 – 1065 (1931 – 1952).

I have seen in Korea enough of horror and brutality and savagery for a life-time. But to see is not enough. For unless civilised peoples of the whole world raise up and stay the hands of the criminals, the horror and savagery will spread. Korea is not an incident. It is part of a world-wide plan of dangerous madmen.⁶⁶

This was duly followed by a message in the Communist Party London District Bulletin on 4 April while Gaster was still overseas, in which he claimed that the Americans were distributing ‘germ-laden insects in Korea’.⁶⁷ On their return, the IADL Commission presented their report to the IADL Council in Vienna on 16 April, at a meeting chaired by Pritt. A detailed account of their findings was presented to the press at about the same time, closely watched by British and no doubt other security services. So far as the British government was concerned, this was nothing more than an international endeavour to support the Soviet Union, with newspapers reporting that panel members had been unable to answer basic questions, and the IADL chairman embarrassed that photographs supporting various claims had been supplied by Chinese scientists, the integrity of whom these newspapers and agencies appeared to question.⁶⁸

VI ALLEGATIONS OF TREASON

Returning to London a few days later, Gaster called a press conference to present a 38-page indictment of US war crimes. Reported by the *Daily Worker* on 23 April, this was said to refer to ‘germ warfare, shooting without trial, burning alive, torture and organised destruction’.⁶⁹ In the meantime, however, MI5 were to learn that on 30 April 1952 a meeting of the Haldane Society took place at which it appears Gaster’s claims met with some scepticism from what ought to have been a sympathetic audience.⁷⁰ The sceptic in chief was Harvey Moore QC who had declined an invitation to sit on the IADL Commission because of the vagueness of its terms of reference, doubts about its funding, and the uncertainty about to whom the Commission was responsible. Moore also raised the question about how the Commission could be sure that it was not the Koreans or the Chinese who had spread the germs.

According to MI5, which had a lawyer very deeply embedded in the Haldane Society, the best Gaster could say was that on a balance of probabilities, it was the Americans that were responsible.⁷¹ This seemed to satisfy the great bulk of those present at the

⁶⁶ *Soviet Weekly*, 3 April 1952

⁶⁷ London District Bulletin, ‘America’s Germ Warfare’, 4 April 1952 (extract in TNA, DPP 2/2424 (Jack Gaster: Communist Activities in Korea)).

⁶⁸ TNA, DPP 2/22/24 (Copy of Foreign Office INTEL 106, 24 April 1952).

⁶⁹ Ibid. Gaster’s articles in the *Daily Worker* were then republished as a pamphlet also entitled *Korea – I Saw the Truth*.

⁷⁰ TNA, DPP 2/2424 (Security Service Report on Mr Jack Gaster).

⁷¹ The US has always denied the claims about germ warfare, though the vehemence of the denials has generally reinforced the depth of the scepticism. One recent analysis suggests, however, that the ‘collected testimony and evidence is overwhelming that the US did use biological warfare during the Korean war’: T Powell, ‘Biological Warfare in the Korean War: Allegations and Cover-up’ (2017) 31 *Socialism and Democracy* 23. There is also a very good balanced analysis in J Ryall, ‘Did the US Wage Germ Warfare in Korea?’, *Daily Telegraph*, 10 June 2010.

meeting, with 490 voting to support the motion that Gaster had made a strong prima facie case (exactly about what is not clear), Moore abstaining along with a handful of others. But Moore was not the only critic, Gaster's activities leading more ominously elsewhere to predictable Tory demands for his prosecution, in relation to the 'publication of a seditious pamphlet, circulating in this country through a Mr Jack Gaster', sent by IADL 'to consort with the enemy in North Korea and North-East China'.⁷² The Attorney General – by now Sir Reginald Manningham Buller QC (subsequently Viscount Dilhorne, Lord Chancellor) - wisely thought that no criminal proceedings were called for, though significantly the demand at this stage was not for a treason prosecution as had been the case in relation to Alan Winnington and Monica Felton under the previous government.

The Gaster case was, however, to land on Manningham Buller's desk on at least two subsequent occasions when the treason question was raised again. The first of these was for remarks made at a meeting of the Haldane Society of Socialist Lawyers a few years later, no doubt informed by what he had seen in 1952. Here we find the Tory backbencher Cyril Black writing to the Attorney in 1955 about a constituent who would prefer 'if possible not to have his identity revealed'.⁷³ The constituent in question, said to be 'a strong anti-communist', had attended a Haldane meeting at which Gaster is alleged to have made a speech of 'treasonable character' about the Korean conflict. The matter was taken sufficiently seriously to again involve the DPP, who advised that it would be very difficult to establish that anything said at a Haldane Society meeting was treasonable, but suggesting also that it would do no harm to interview the informant 'since he is apparently prepared to supply information on request'.⁷⁴

Unusually, the brief exchange of correspondence between Black, Manningham-Buller, the DPP and officials revealed the identity of the informant, the MI5 censor apparently not consulted when this file was opened in December 2007. On 22 March 1955, Black wrote to Manningham-Buller in the following terms

I have been in communication with my constituent who has authorized me to disclose his name. He is Mr A F H Lindner, Solicitor, practising at 17, Soho Square, W1, whose private address is 2, Ridgeway Gardens, Wimbledon, SW 19.

Mr Lindner tells me that he has not retained his notes that he took of various statements made at meetings of the Haldane Society which he attended, but, following each meeting, he sent a full report to the Special Branch as to the statements made which he regarded as being of a treasonable character. You can presumably obtain access to these reports sent by Mr Lindner to the Special Branch. Mr Lindner would be available for interview if desired.⁷⁵

We know nothing about Mr Lindner, but note that an A F H Lindner had been an unsuccessful Labour candidate at the 1945 general election. We do not know at this

⁷² HC Debs, 21 July 1952, col 4.

⁷³ TNA, LO 02/227

⁷⁴ TNA, LO 02/227

⁷⁵ TNA, LO 02/227. On the significance of the 'outing' of Lindner, see K D Ewing, J Mahoney and A Moretta, 'Tinker, Tailor, Lawyer, Spy?' (2015) 69 *Socialist Lawyer* 18.

stage whether they are the same person. We have no idea whether Mr Lindner provided other information, or who were the other ‘sources’. Apart from the fact that MI5 cannot be trusted to guarantee the anonymity of sources forever, it is nevertheless thus clear that the Tory treason campaign was being pursued both publicly and privately.

The DPP’s advice about the implausibility of a treason prosecution was reinforced later that year when, following the re-opening of the Korean War scars for the reasons described below, Manningham-Buller referred to him for re-consideration the position of all four of the British ‘subversives’, including Gaster. To help the Director consider this question, he was conveniently sent a five page memorandum from MI5 containing information drawn from Gaster’s MI5 file,⁷⁶ as well as the details of the IADL report.⁷⁷ In considering liability for treason, the DPP drew attention to its scope as well as the capital nature of the offence, but also pointed out that even during the Second World War treason was resorted to on only four occasions, the government preferring instead to rely on by now repealed statutory emergency powers which included a much more flexible approach to sentencing and punishment. But in swiftly dispatching any suggestion that treason would be appropriate in the Korean war cases, the DPP said (directly contradicting the advice given to the Attlee Cabinet by Shawcross with the support of Viscount Jowitt (Lord Chancellor)):

But even assuming, which in my view is doubtful, that the North Koreans and the Chinese were enemies within the meaning of the Treason Act, the conduct of these persons, though undoubtedly reprehensible, could scarcely be said to merit death.⁷⁸

It did not follow from this, however, that the legal position as it then stood was satisfactory, the DPP noting that in times of war it was relatively easy for governments to get emergency powers to deal with those engaged in subversive activities. But as he pointed out, it was much more difficult to get such powers when British troops were engaged in hostilities overseas, as in the cases of Korea and Malaysia, which was then also germane. In these circumstances, the Director advised that permanent legislation based on war time powers should be introduced to make it an offence for anyone ‘with intent to assist any enemies against whom Her Majesty is engaged in hostilities, any person does any act which is likely to assist any such enemies, he shall, without prejudice to the law of treason, on conviction on indictment, be liable to imprisonment for fourteen years’.⁷⁹ This echoed proposals referred to above that had been under active consideration by the Attlee government, having been torpedoed first by the Cabinet Secretary, and then by the general election in 1951.⁸⁰ No legislation was introduced, though the matter appears to have been

⁷⁶ On which see TNA, KV 2/1558 (134-1945), and TNA, KV 2/1559 (1945 – 1953).

⁷⁷ See TNA, DPP 2/2424 (GASTER, Jack: Communist Activities in Korea. No action). See also TNA, DPP 2/2423 (SHAPIRO, Michael: Communist Activities in Korea. No action), and TNA, DPP 2/2425 (FELTON, Monica: Communist Activities in Korea. No action). There is no corresponding file for Winnington, but there was no basis for a prosecution.

⁷⁸ TNA, DPP 2/2424 (GASTER, Jack: Communist Activities in Korea. No action) (Subversive Activities during Hostilities, Memorandum by the Director of Public Prosecutions, 30 June 1955). Compare the views of Shawcross and Jowett, p *** above.

⁷⁹ A certificate by a minister would prove conclusively the fact of hostilities, and perhaps also identify the enemy in the event of any prosecution.

⁸⁰ See also pp *** - *** below.

considered further by the government.⁸¹

VII THE PRISONERS OF WAR

As we have seen, the Armistice was signed on 24 July 1953, and with it the end of what the government considered to be the subversive propaganda. But quite unexpectedly, the Korean issue re-emerged as a serious domestic political issue when the question of British POWs was considered by the Cabinet some 16 months later (2 December 1954).⁸² The occasion seemed to be US anger about the treatment of its POWs by the Chinese during the Korean War. The Foreign Secretary (Anthony Eden) said that he proposed to express his support in the House in a forthcoming debate, and that a factual statement would be published about the treatment of British military personnel. Noting these statements, the Cabinet invited the Minister of Defence to circulate the latter statement to the Cabinet before publication. This was duly done on 7 December 1954, the Cabinet being presented with the proofs of a statement by the Ministry of Defence about the treatment of British prisoners of war captured during the Korean campaign.⁸³

The statement was to be the opportunity for the publication of ‘severe, though well deserved, strictures on the conduct of a number of visitors, Communist and Communist sympathisers, to the prison camps in North Korea at which the British prisoners – of war – were held’.⁸⁴ So although there had not been any treason prosecutions, now was the opportunity for some kind of retribution by what was no less than an unprecedented and unparalleled public denunciation of Alan Winnington, Monica Felton, Jack Gaster, and several others.⁸⁵ But such a process was fraught with legal danger for the government, the immediate question being whether the Report would ‘afford ground for libel’.⁸⁶ To which the answer unequivocally was a resounding ‘Yes’. In a memorandum dated 13 December 1954, the Attorney General (writing also on behalf of the Solicitor General) considered chapters 6 and 7 of the Ministry of Defence document to contain ‘many defamatory, indeed highly defamatory, passages in relation to the individuals named therein’.⁸⁷

As a result, unless the publication was the subject of absolute privilege, any of the named persons could bring libel proceedings against the Crown, with the Attorney General being the likely defendant. So while not doubting that the defamatory

⁸¹ TNA LO 2/228 (Subversion: Treason: undeclared wars: Korea: law reform: legislation proposals: Defence (General) Regulation 2A: legal position: sabotage: Overseas Operations (Security of Forces) Bill 1950: Subversive Activities Bill 1951: situation report) is closed until 2032.

⁸² TNA, CAB 128/27/81 (Cabinet Conclusions, 2 December 1954).

⁸³ TNA, CAB 129/72/33 (Publicity for the Treatment of British Prisoners of War in Korea by the Communists, Note by the Minister of Defence, 7 December 1954). According to the Secretary of State, the report was based on ‘a very careful interrogation’ of virtually all the British POW’s since their return to British hands.

⁸⁴ *Ibid.*

⁸⁵ It also provided the opportunity for a review of the possibility of a treason prosecution, as discussed above.

⁸⁶ TNA, CAB 129/72/33 (Publicity for the Treatment of British Prisoners of War in Korea by the Communists, Note by the Minister of Defence, 7 December 1954).

⁸⁷ TNA, CAB/129/72/36 (Publicity for the Treatment of British Prisoners of War in Korea by the Communists, Memorandum by Sir Reginald Manningham – Buller, 13 December 1954).

statements relating to all four of the British civilians who had visited the POW camps were well merited, the Law Officers nevertheless thought it unlikely that the publication of such defamatory material to the public at large would be the legally protected as being subject of qualified privilege. Indeed, the Attorney General continued by saying that

Having regard to the way in which the draft is written, and the omission to name any soldiers who collaborated while naming these civilians, we think it likely that it would be held that there was malice in which case a defence based on a plea of qualified privilege would fail.⁸⁸

Not only that. Concern was also expressed that if a libel action succeeded, the damages ‘might be very substantial indeed as the innuendo clearly is that these named civilians were guilty of conduct akin to treason’.⁸⁹

In order to avoid these problems, the Law Officers appeared to suggest that the document should be published under cover of the Parliamentary Papers Act 1840. The latter provided that legal proceedings (civil or criminal) were to be stayed if (i) they arose out of the publication of a document published with the authority of either House of Parliament, and (ii) an official of the House in question produced a certificate to confirm such authority.⁹⁰ The Attorney General also pointed out that by virtue of s 3 of the 1840 Act, the publication of an extract from the report would be similarly protected, provided it was published ‘bona fide and without malice’. But although this would provide legal protection for the government (and it seems remarkable that such advice had not already been provided within the Ministry of Defence), there were other concerns:

If it is published in this fashion, those named and their fellow travellers may complain that publication of highly defamatory libels in a paper so protected is really an abuse of Parliamentary procedure and that those named are being condemned in the public eye for conduct akin to high treason without a trial and without any opportunity of clearing their names and reputations; and those who condemn the conduct of these civilians may demand to know why they have not been tried.⁹¹

In the light of these concerns, the Law Officers proposed that if the document was published with the authority of the House (which they appeared to think was inevitable), chapter 6 and 7 should be re-written to reduce the risk of the government being accused of abusing parliamentary procedure. They thus proposed to reduce the defamatory content of the chapters without depriving them of their point. In concluding the two-page document, the Law Officers wrote as follows:

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ On the Parliamentary Papers Act 1840 and its background (*Stockdale v Hansard* (1839) 9 Ad & El 1), see A W Bradley, K D Ewing and C J S Knight, *Constitutional and Administrative Law* (16th ed), ch 9.

⁹¹ TNA, CAB/129/72/36 (Publicity for the Treatment of British Prisoners of War in Korea by the Communists, Memorandum by Sir Reginald Manningham – Buller, 13 December 1954).

Could not the line be that the public should be made aware of the use made by the Chinese and the North Koreans of visits by civilians to the British prisoner – of – war camps, and the consequences of such visits to British prisoners – of – war, without suggesting that these named visitors connived in the use to which their visits were put and were aware of the consequences to certain British prisoners; that they were ignorant idiots rather than traitorous.⁹²

The answer it seems was a just as resounding ‘No’, the legal concerns apparently overruled, and the report being published without amendment and without cover of parliamentary privilege. The government it seems was prepared to take the risk and to invite the ‘civilians’ to sue, confident in the knowledge that they would not do so.⁹³

The Cabinet Secretary’s Notebook reveals that at the Cabinet meeting on 15 December the Foreign Secretary rejected Sir Reginald’s suggestion that the material be rewritten to avoid the implication of treachery.⁹⁴ It also reveals that Eden rode the criticism of H[arry] C[rookshank] (Lord Privy Seal) that White Papers are usually objective, and this one was not. Eden insisted that the document should be published without protection, at which point the Prime Minister no less proposed that the Attorney General should be permitted to consider alterations to reduce the risk of prosecution. To which Eden stubbornly replied that they could not do that and the government must run the risk of legal proceedings against it.⁹⁵ But why was it necessary to pillory the individuals asked the Marquess of Salisbury (Lord President), and why could minor alterations not be made to reduce the risk of proceedings repeated the Attorney General? None of this would damage the central point of the paper which was to condemn the Chinese. But Eden refused to ‘let off’ the English communists, and in this he had the support of the Minister of Labour, and ‘K’, who appears to have been Lord Kilmuir the celebrated ‘author’ of the ECHR.

VIII ALLEGATIONS OF TREASON

In thus publicly denouncing four Britons and one Australian citizen, the White Paper also provided an opportunity to revisit the treason allegations.⁹⁶ Thus, Chapter 6 of the White Paper (headed the ‘Role of Visitors’) begins with the claim that until recently, independent visitors such as the Red Cross were barred by the Chinese from the prison camps in Korea, whereas facilities were readily arranged for visits by Communists and Communist sympathisers. More specifically, it was said that

The Chinese used five British Commonwealth visitors in their cause. These were Mr Alan Winnington of the London *Daily Worker*; Mr Wilfred Burchett, an Australian by birth, who went to China as a correspondent for the Left – wing *Paris Ce Soir*, and later *L’Humanite*, and then on to Korea; Mr Michael

⁹² Ibid.

⁹³ TNA, CAB 128/27/87 (Cabinet Conclusions, 15 December 1954).

⁹⁴ TNA, CAB 195/13/9 (Cabinet Secretary’s Notebook, 15 December 1954), on which this paragraph draws.

⁹⁵ Eden knew that there was little chance of accountability to Winnington and Shapiro, recorded cynically by the Cabinet Secretary to have said at the same meeting that ‘Winnington & Shapiro were refused Br. ppts. They prob. fear to return’: TNA, CAB 195/13/9 (Cabinet Secretary’s Notebook, 15 December 1954). This does not appear in the Cabinet Conclusions.

⁹⁶ Ministry of Defence, *Treatment of British Prisoners of War in Korea by the Communists* (1955).

Shapiro, a correspondent of the London *Daily Worker*, resident in Peking; Mr Jack Gaster, a member of the British Communist Party and a London solicitor; and Mrs Monica Felton, chairman of the British National Association of Women, which is affiliated to the Women's International Democratic Federation, an international Communist 'front' organisation.⁹⁷

Also according to the report, Gaster had visited in 1952 as part of a delegation of the International Association of Democratic Lawyers (IADL), dubbed 'another international Communist 'front' organisation, which had been invited by the Chinese and North Korean governments to investigate allegations of bacteriological warfare and atrocities by United Nations troops'.⁹⁸ Gaster, who made only one visit, was said by the government report to have provided 'glowing accounts of camp conditions', writing that prisoners 'get more meat, more fats, and more sugar to eat than anyone in Britain receives from a ration book'.⁹⁹ In the case of Mrs Felton, it was said that she

first visited Korea as a member of a delegation from the Women's International Democratic Federation in May 1951, and on her return wrote a book called *That's Why I Went*. This purported to show that she was originally open-minded but subsequently became convinced, as a result of 'proofs' which she was shown, of wholesale murder, torture and rape carried out by the United Nations forces. She also brought back from Korea with her a number of letters from British prisoners. In 1952, Mrs Felton received a Stalin Peace Prize in Moscow whence she again went to China and Korea, and visited Camp 5. There she had the usual conducted tour, collected letters from prisoners and talked to, and had a meal with, the usual selected 'progressives'. As one prisoner has said: 'Mrs Felton visited the camp and took the progressives down to the village, which made her even more unpopular with the anti-progressive personnel'. A talk by her on world peace and American aggression was recorded and subsequently played over the loudspeaker system of Camp 2 (Branch 1) early in 1953.¹⁰⁰

The other three named civilians (to use the language of the Attorney General) were not resident in the United Kingdom and came in for more damning criticism. *Daily Worker* journalist Alan Winnington had 'produced lurid accounts of germ warfare', as well as 'harrowing stories of the 'indiscriminate' bombing of civilians, descriptions of the happy lives supposed to be led by prisoners in the North Korean camps, and of massacre, torture and brutality suffered by the Chinese and North Koreans in the prison camps controlled by the United Nations'.¹⁰¹ But according to the Ministry of Defence, his main role in North Korea was that of visiting propagandist, in which capacity he gave lectures on such subjects as the Korean peace talks, the aims of the world peace conferences, and the appalling conditions in the United States and Britain. He was said to be welcome in one of the camps but often to be greeted with shouts of 'traitor' and such like in another. But he was unpopular with officers, to whom it is said he once referred as 'bloody fascists'.¹⁰²

⁹⁷ Ibid, pp 20 – 21.

⁹⁸ Ibid, p 21.

⁹⁹ Ibid.

¹⁰⁰ Ibid, pp 21 – 22.

¹⁰¹ Ibid, p 21.

¹⁰² Ibid.

Finally, reference was made to the role of Michael Shapiro, another *Daily Worker* journalist who it said was used not as a propagandist but as an interrogator, being first seen by prisoners in Korea in February 1951 when he individually interrogated and interviewed men captured near Seoul in the previous month. Some of the most unpleasant accusations were reserved for Shapiro, in respect of whom it was said that

During the interrogations one sergeant of the Royal `Ulster Rifles, who was suffering from dysentery and the early symptoms of beri-beri, from which he later died, told Shapiro that he was the 'poorest example of an Englishman I've ever seen, and if I could get my fingers round your scrawny neck I'd wring it'. Shapiro retaliated by having him marched out with the comment: "I'll have you shot". This remark was perhaps not meant seriously but the early death of the sergeant suggest he was given little medical attention.¹⁰³

At about the same time as these events, Shapiro was said to have lectured a number of US prisoners, and to have told them that they were 'warmongering dogs who deserve to die like dogs', and to have been 'amused' to 'see the prisoners dying fast of malnutrition and neglect'.¹⁰⁴ Whether any of this would have stood up to scrutiny in legal proceedings will never be known, though it is easy to understand why the law officers might be nervous about highly prejudicial statements of fact and wild speculation informed by evidence of what seemed at best to be uncertain probative value.

Following publication of the White Paper, the matter returned to Cabinet on 3 March 1955, where the Attorney General raised a fresh concern.¹⁰⁵ Apparently frustrated by the inactive legal position in relation to the four named individuals, a number of government supporters were reported by Manningham-Buller as intending to seek leave to introduce under the ten-minute rule a Bill of Attainder against the persons concerned. This is a procedure described by Maitland as an Act of Parliament 'for putting a man to death, or otherwise punishing him without any trial at all'.¹⁰⁶ In the words of Maitland, 'It is not a judicial act, it proceeds with the legislative authority of King, Lords and Commons',¹⁰⁷ emphasizing that punishment is inflicted 'without any judicial formalities'.¹⁰⁸ This 'evil practice' had last been used to inflict the death penalty in 1696, though 'minor punishments have been inflicted by similar means in later days'.¹⁰⁹ Little wonder that there should be a frisson of alarm in the Attorney-General's report to Cabinet, where it was noted with some understatement that the 'consequences of such action were likely to be unfortunate'.¹¹⁰ There was general agreement that 'it was undesirable that the power of attainder should be revived', and Sir Reginald was invited 'to indicate informally' to the Government supporters concerned that the Government 'did not favour the promotion of a Bill of Attainder under the ten-minute rule'.¹¹¹

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ TNA, CAB 128/28/20 (Cabinet Conclusions, 3 March 1955).

¹⁰⁶ F W Maitland, *The Constitutional History of England* (1920), p 215.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid, p 216

¹⁰⁹ Ibid, pp 319 – 320.

¹¹⁰ TNA, CAB 128/28/20 (Cabinet Conclusions, 3 March 1955).

¹¹¹ Ibid.

The government it seems was content that the individuals in question should be publicly denounced without any further formality. This in itself was an obnoxious process for reasons given by Sydney Silverman, addressing the Attorney General from the Labour benches in the following terms:

In view of the undesirability of condemning people in advance of proceedings and upon anonymous evidence, will the right hon and learned Gentleman say what opportunity was given, if any, to the named persons to comment on the allegations made against them before their names were used in this publication in this way?¹¹²

Given that he had himself already raised concerns of this kind privately in his Cabinet Memorandum of 13 December,¹¹³ Manningham – Buller's response was at best disingenuous. So far as he was concerned, it was now enough that 'that there appears to have been plenty of opportunity for comment in the columns of the *Daily Worker* since publication'.¹¹⁴ The sense of inadequacy of the response is reinforced by the subsequent comment by the Lord Chancellor who, when pressed in the House of Lords to distinguish Mrs Felton's activities from those of Sir Roger Casement,¹¹⁵ replied that he had been authorised by the Attorney General to say that 'however much one may deplore Mrs Felton's activities, there is no evidence that she tried to suborn British prisoners of war'.¹¹⁶ This said Viscount Kilmuir contrasted with Casement's case, where 'there was clear evidence, which Casement himself did not dispute, that he had actively endeavoured to persuade British prisoners to fight against this country'.¹¹⁷

IX ... BACK TO ALAN WINNINGTON

The more serious allegations were made against both Winnington and Shapiro, but they were both now resident in China, a carefully worded threat of treason discouraging any thoughts (however distant) of a speedy return, Manningham-Buller having also said in the House of Commons on 7 March 1955 that if either returned careful consideration would then be given to the institution of a criminal prosecution against them.¹¹⁸ But just to make sure that they did not return – with a view implausibly to bring libel proceedings or more plausibly for any other reason – their route was blocked by the refusal on the part of the British government in 1954 to renew their passports, which meant that they were free to travel only between

¹¹² HC Debs, 7 March 1955, col 33.

¹¹³ TNA, CAB/129/72/36 (Publicity for the Treatment of British Prisoners of War in Korea by the Communists, Memorandum by Sir Reginald Manningham – Buller, 13 December 1954).

¹¹⁴ HC Debs, 7 March 1955, col 33.

¹¹⁵ *R v Casement* (1916) 32 TLR 601 (KBD); (1916) 32 TLR 667 (CCA), on which see C A Gearty, 'The Casement Treason Trial in its Legal Context', in M Daly (ed), *Roger Casement in World History* (2004).

¹¹⁶ HL Debs, 16 March 1955, col 1123.

¹¹⁷ *Ibid.*

¹¹⁸ HC Debs 7 March 1955, col 31, where the four named in the White Paper were the subject of strong criticism by a number of Tory backbenchers. Gaster was accused of behaving 'in a thoroughly traitorous manner', while in a reference to Winnington and Shapiro, the Attorney General was asked whether 'he will treat them as traitors and hang them when they come back?'.

Communist countries.¹¹⁹ It is thought that Shapiro never returned to the United Kingdom, while Winnington's passport was not restored for another 14 years. A similar fate befell the fifth man, Wilfred Burchett whose Australian passport was restored only by the Whitlam government in 1972.

But the use of these tactics was not only gratuitous; it was also malevolent and dishonest, as the circumstances surrounding Winnington's passport were to reveal. Winnington tried on several occasions since 1954 to renew his passport, being rejected by both Tory and Labour governments. This is revealed in a series of exchanges between Foreign Office officials in 1966, which show that as early as 1963 Winnington had been told that he would be given an emergency certificate (subsequently referred to as an emergency passport) which would authorize a single one-way journey only. Although there was no plan to prosecute him were he to return to the United Kingdom,¹²⁰ no guarantees could be given that a prosecution would not take place. It is thus hardly surprising that neither Winnington nor the *Daily Worker/Morning Star* should find this attractive, officials continuing to justify the refusal of more meaningful assurances on the specious but convenient ground that Winnington may have committed treason.¹²¹

It was thus not until 1968 that Winnington eventually succeeded in having his passport restored, after a long battle fought politically, and in the press.¹²² Even *The Times* thought that 'to withhold [Winnington's] passport for 14 years by an arbitrary administrative decision, and to refuse even now to reconsider that decision, is intolerably unjust'.¹²³ But it was a letter to the editor of the *Times* (when such communications carried more weight than they do today) that revealed the real nature of the injustice, the author of the letter being George Matthews, who was himself the editor of the *Morning Star*.¹²⁴ Matthews exposed the lie, pointing out that in 1954 the Attorney General had told the Commons that he had no evidence that Winnington had been part of the interrogation of British POWs. Yet only a few months later a Foreign Office minister had written to a Labour MP to say that Winnington's passport had been refused because he had been involved in these interrogations.¹²⁵

Little wonder that Matthews should also take issue with Eden's vague and unsubstantiated charge in 1954 that Winnington was engaged in conduct 'prejudicial to the national interest' such as to justify the withholding of his passport.¹²⁶ As

¹¹⁹ This was done under the exercise of prerogative powers which at the time gave the Foreign Secretary 'the legal power to refuse passports whenever he chooses': TNA, FO 53/37 (D MacFarlane to F Penston, 10 July 1968)

¹²⁰ TNA, FCO 372/8084 (Minute by John Denson, 1 February 1966).

¹²¹ TNA, FO 372/8084 (Minute by B A B Burrows, 3 February 1966).

¹²² This is laid bare in the correspondence in the files TNA, FCO 53/37 and FCO 372/8084.

¹²³ As referred to by George Matthews, Letter to the Editor, *The Times*, 21 June 1968.

¹²⁴ For Matthews, see TNA, KV 2/3075 – KV 2/2081 (covering 1939 – 1960). The file does not cover the period of the 1960s

¹²⁵ HC Debs, 9 November 1953, col 13W – in response to a question from a Labour MP who asked whether the Attorney was 'aware that Mr Alan Winnington, of the 'Daily Worker', was present at the interrogation of British prisoners of war in Korea, that he took part in the torturing of these men by incessant questioning in the hope of ultimate admission of the false statement of the use of germ warfare by United Nations troops; and, since this country was fully committed to all the military action taken in Korea, if he will proceed against this man for incitement to disaffection'.

¹²⁶ *The Times*, 21 June 1968.

Matthews pointed out:

We consider that far from being 'prejudicial to the national interest' Mr Winnington's activities were of great value in throwing light on aspects of the Korean war which the British people were fully entitled to be informed about. He was doing his duty as a journalist, and it is outrageous that because of this a spiteful action was taken against him which for 14 years has made it difficult for him to function fully and effectively as a correspondent of this newspaper.¹²⁷

But although it appears that a decision had been justified on false evidence, a failure compounded by the fact that a member of Parliament had been misled by a minister, the original decision was upheld by successive Foreign Secretaries, with the principal reason for denying a passport as late as 1966 being a concern that Winnington's return to the United Kingdom 'might lead to political embarrassment'.¹²⁸

The injustice of the position was set out not only by the editors of the *Morning Star* and the *Times*, but also by John Beith, the Foreign Secretary's Private Secretary, who wrote that the main reason for restoring the passport was that 'the arbitrary removal of passports without trial, conviction or indeed any process of review is a procedure much resented in the country'.¹²⁹ According to Beith (in what is a clear acknowledgement that Winnington was being punished by the government for his activity in Korea), most people would consider that Winnington had paid his score by 14 years incommunicado and that it would be a reasonable act of clemency to renew the passport.¹³⁰ Further evidence that the passport was being used as an instrument of punishment for reporting inconvenient truths is to be found in an internal minute in which it was claimed that there was 'ample justification' for non renewal on account of the behaviour set out in the White Paper above,¹³¹ 'despite the fact that insufficient evidence to prosecute Mr Winnington in a court of law has ever been found'.¹³²

It is nevertheless unclear whether considerations of principle were as decisive as cynical acts of political calculation in the restoration of the passport. Here the government was plagued by three anxieties: the campaign in the press, the fact that an MP had been given false information in 1954 to justify the original decision, and a parliamentary campaign being led by Tom Driberg MP. But lurking behind all of this was a fear of US reaction, for although there was no evidence that Winnington was involved in the interrogation of British POWs, there was said to be unspecified evidence that he had been involved in the interrogation of US POWs.¹³³ This was laid bare in an official minute to Beith, in which it was recorded that Driberg's campaign

¹²⁷ Ibid.

¹²⁸ TNA, FO 372/8084 (Minute by B A B Burrows, 3 February 1966). Michael Stewart, then Foreign Secretary did not support the restoration of the passport at this time ('risks not worth taking'): TNA, FO 372/8084 (Minute by Foreign Secretary, 10 February 1966).

¹²⁹ TNA, FCO 53/37 (Minute by John Beith, 1 July 1968).

¹³⁰ Ibid. In the end this was the public reason for the restoration of the passport, which could not be refused forever and the refusal had run its defensible course: TNA, FO 53/37 (D MacFarlane to F Penston, 10 July 1968)

¹³¹ TNA, FCO 53/37 (Minute by John Beith, 1 July 1968).

¹³² TNA, FCO 53/37 (Minute by D MacFarlane, 10 June 1968).

¹³³ Ibid.

was likely to lead to a reference to the newly established Parliamentary Commissioner for Administration,¹³⁴ and with it an outcome unfavourable to the government in light of the evidence. Better then to slip this out quietly without alerting the Americans, than after a PCA investigation which ‘would be likely to receive more publicity in the United States than would the restoration of facilities without his intervention’.¹³⁵

X CONCLUSION

In striking parallels with the Blair government elected in 1997, Attlee’s general election manifesto commitment in 1945 to restore civil liberties was quickly to wear thin,¹³⁶ the government provoked beyond endurance by reports about what the United Nations forces were alleged to be doing in Korea. Unlike Blair’s response to international terrorism, however, Attlee was unable to follow through with legislation, though this had been contemplated. The type of legislation that the DPP suggested above had previously been advocated by Chuter Ede (Home Secretary), to ‘close some of the gaps in the existing law’,¹³⁷ so that it should be an offence where an individual

systematically publishes false or misleading matter in any newspapers, leaflets, periodicals or other documents with a view to influencing public opinion (whether in the United Kingdom or elsewhere) in a manner likely to be prejudicial to the carrying out by His Majesty’s forces or by the forces of an associated Power of any operations outside the United Kingdom involving the use of force.¹³⁸

But even if the government had been able to enact measures of this kind, in the context of the Korean war it may not have been of much assistance in light of the admission by Sir Norman Brook (Cabinet Secretary) privately that Winnington was telling the truth.¹³⁹

¹³⁴ Parliamentary Commissioner Act 1967. Foreign Office officials were right to be concerned about the Ombudsman, as the Sachsenhausen case about a different historical maladministration was soon to reveal: G O’Hara, ‘The Parliamentary Commissioner for Administration, the Foreign Office, and the Sachsenhausen Case, 1964-1968’ (2010) 53 *Historical Journal* 771.

¹³⁵ TNA, FCO 53/37 (Minute by D MacFarlane, 10 June 1968).

¹³⁶ Labour Party, *Let Us Face the Future* (1945), p **. See also J Chuter Ede, ‘Parliament and the Liberty of the Subject’ (1947) 1 *Parliamentary Affairs* 10. This was a stirring defence of civil liberties and the role of Parliament in their defence by the then Home Secretary, which few if any of his successors could have matched. On Ede, see also J Mahoney, ‘Constitutionalism, the Rule of Law and the Cold War’, in T Campbell, K D Ewing and A Tomkins (ed), *The Legal Protection of Human Rights – Sceptical Essays* (2011), ch 7; also J Mahoney, ‘Civil Liberties in Britain During the Cold War: The Role of Central Government’ (1989) 33 *American Journal of Legal History* 53.

¹³⁷ TNA, CAB/121/41 (Subversive Activities in Connection with the Fulfilment of His Majesty’s Obligations in Pursuance of the United Nations Charter, Memorandum by the Home Secretary).

¹³⁸ It would be a defence that the accused did not know and had no reasonable ground for believing that the matter was false or misleading, and that the publication was a reasonable comment on a matter of public interest.

¹³⁹ This proposal provoked the only reference to free speech in the internal debates between ministers and officials, when it was said by Norman Brook (Cabinet Secretary) that the proposal ‘would surely prove to be highly controversial. The Home Secretary admits that it is unlikely that a successful

The parallels do not end there. What the experience of Winnington, Felton and Gaster expose is the importance of the administrative power of the state to threaten, intimidate and punish. That power could hardly be greater than in the use of treason as a weapon, given the consequences of a conviction and the reliance of the convicted person on the mercy of a Home Secretary, whose decision would be swayed by the same political calculations that moved the frankly unimpressive Attorneys General encountered above. In relation to Korea all three Attorneys General allowed themselves to be guided by political calculation, losing any sense of their responsibility to provide independent legal advice to the government.¹⁴⁰ Playing to a gallery of fully aroused Tory back-benchers, all three were to make ill-judged and ill-informed claims about treason, which were privately repudiated by the DPP, while also making politically motivated threats about prosecutions which could never be brought.

The use of law to threaten, intimidate and punish without resorting to prosecution is a *power* rarely acknowledged. This is not to suggest that if the contemporary instability in Korea were to lead to conflict that we would see renewed attempts to use treason in the same way to silence those who reported on any such conflict, the number of journalists and activists doing so likely to be much greater today, and their criticism much more intense than in 1950-1953.¹⁴¹ Indeed, it is likely that we have seen the last of treason being deployed in this way, hopefully not only because governments have many other powers at their disposal than were available in the 1950s. That said, there is no reason to believe that the protection of freedom of expression now by statute (Human Rights Act 1998) rather than then by the common law will offer any better protection from the administrative harassment of dissidents that we encountered in the Korean conflict, even if it may offer some opportunity for redress.¹⁴²

In essence, however, the foregoing is an extreme example of a method of State behaviour which undermines civil liberties casually and informally, which has been repeated on various occasions ever since, when insiders, journalists and others have exposed malpractice. These are administrative powers which involve harassment of various kinds, using the authority of the State improperly and opportunistically as an instrument of intimidation. (We do not include here harassment and worse that has no legal authority and which for all practical purposes is also designed to silence critics of different kinds.) But from Korea to the Iraq war - and now Syria - we can

prosecution would be brought under it. That being so, the Cabinet will wish to consider whether it is worth the difficulties which it would provoke with the champions of free speech, freedom of the press, etc': TNA, PREM 8/1525 (Overseas Operations (Security of Forces) Bill, Minute by Cabinet Secretary to Prime Minister, 24 July 1950). The issue was revisited in 1951 and again in 1955-6. See note 59 above.

¹⁴⁰ On the role and responsibilities of the Attorney General, see HC 206, 2007-08, in which the House of Commons Constitutional Affairs Committee expressed disquiet about the conflict between the Attorney General's role as provider of independent legal advice to government with his role as a professional politician.

¹⁴¹ It is unlikely that these journalists would be politically vetted by MI5 as they appear to have been in 1950-1953, as suggested by the diary of Guy Liddell, then deputy director of MI5: TNA, KV 4/474 (Liddell Diary, 21 November 1951).

¹⁴² The exercise of such power is also more likely to be the subject of judicial scrutiny than in the 1950s, the Korean war period being the nadir of judicial review in the post-war era. See *R (Miranda) v SSHD* [2016] EWCA Civ 6, [2016] 1 WLR 1505.

see many examples of the State's taste for casual and informal interventions (albeit rooted in some kind of legal authority) rather than the use of legal proceedings to crush opponents.¹⁴³ If in 65 years time legal historians are looking back to find parallels for what we discuss above, they may well point to Kathryn Gun, David Kelly and Andrew Gilligan as examples.¹⁴⁴

This is not to say that the claims against all the latter were as brutal or as serious as the claims against Winnington, Felton and Gaster. But they were no less public and no less devastating (especially in Kelly's case)¹⁴⁵ – and no more justified. Nor is this to say that the administrative power of the State is always if ever successful in restraining speech. Despite intimidation of the most appalling kind, Winnington, Felton and Gaster have left a body of work that is now of great contemporary significance, and it is work to which we may be encouraged to return if we are fully to understand the modern crisis in Korea. Those who need to read this work most urgently, however, are the ministers and officials in the government departments that so aggressively abused legal authority, unsuccessfully to deny the British people information about the full scale of the atrocities alleged to have been committed in their name.

¹⁴³ See *The Guardian*, 25 September 2016 (confiscation of passport of Zaina Erhaim, 'a prominent Syrian critic of [Bashar al-Assad](#) at the request of the government in Damascus, effectively preventing her from travelling and blocking her work as an activist').

¹⁴⁴ See K D Ewing, *Bonfire of the Liberties* (2010), ch 5. There is no suggestion of course that these three named had the same political motivations as Winnington, Felton and Gaster.

¹⁴⁵ Dr David Kelly – a government scientist – was found dead, *ibid*.